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*Attorneys for Defendants Culinary Workers Union
Local 226*

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

LISA NIGRELLI, an individual,

Plaintiff,

vs.

VICTORIA PARTNERS d/b/a MONTE CARLO
RESORT AND CASINO, as the employer;
CULINARY WORKERS UNION, LOCAL 226;
and DOES 1-50, inclusive,

Defendants.

CASE NO. 2:15-cv-01840-GMN-NJK

**AFFIDAVIT OF RICHARD G.
McCRACKEN IN SUPPORT OF LOCAL
226'S MOTION FOR SUMMARY
JUDGMENT**

I, Richard G. McCracken, declare:

1. I have personal knowledge of the following facts and if called, could and would testify competently thereto.

2. I am a partner with the law firm of McCracken, Stemerman & Holsberry. Since May 1987, I have served as the primary attorney for Culinary Workers Union Local 226.

3. My responsibilities as Local 226's attorney include providing advice about how to interpret the provisions of Local 226's collective bargaining agreements and advising Local 226's staff

1 about the merits of grievances alleging a breach of a collective bargaining agreement.

2 4. Local 226 represents a bargaining unit of employees at the Monte Carlo Casino (“Monte
3 Carlo”) that includes cocktail servers. There is presently a collective bargaining agreement in effect
4 between Local 226 and the Monte Carlo that covers the period June 1, 2013 to May 31, 2018 (“the
5 Collective Bargaining Agreement”).

6 5. I am familiar with Article 20.04(b) of the Collective Bargaining Agreement as well as
7 other provisions in the Collective Bargaining Agreement relating to seniority and scheduling of work.

8 6. In August 2015, Local 226 Grievance Specialist Esther Dyer asked me for advice about
9 Lisa Nigrelli’s grievance over the change in her hours. Ms. Dyer told me what Ms. Nigrelli’s station
10 and hours were before the April 2015 change to her hours, and that Ms. Nigrelli had bid for that shift
11 and station in 1999. Ms. Dyer also told me what Ms. Nigrelli’s station and hours were after the April
12 2015 change to her hours, and that Dana Wagner had less seniority than Ms. Nigrelli. Ms. Dyer also
13 told me what Dana Wagner’s station and hours were after the April 2015 change to Ms. Nigrelli’s
14 hours. Ms. Dyer described Ms. Nigrelli’s grievance as follows: “Due to her seniority and her original
15 bid, Lisa [Nigrelli] wants to change Monday and Tuesday back to 5p-1a. The Company’s argument is
16 that they wanted to keep consistency with the Pits as they open and close. Lisa’s argument to that is
17 that she can cover Pit 1 until Pit 3 opens. She just wants her hours changed back.”

18 7. I advised Ms. Dyer that Ms. Nigrelli’s grievance did not have any merit. I gave that
19 advice for the following reasons. The shift and station for which Ms. Nigrelli bid in 1999 included
20 working in Pit 3 on Mondays and Tuesdays. When Monte Carlo management changed the hours that
21 Ms. Nigrelli’s shift in Pit 3 began on Mondays and Tuesdays, management did not change Ms.
22 Nigrelli’s shift. This is because Ms. Nigrelli’s start time was shifted forward by two hours only. Under
23 the “two-hour rule”, management may change the starting and ending time of an employee’s shift by
24 two hours without creating a new shift. Local 226 has followed the two-hour rule since at least 1987.

25 8. When I advised Ms. Dyer, I understood that a cocktail server who has less seniority than
26 Ms. Nigrelli works in Pit 1 on Mondays and Tuesdays starting at 5 p.m., the time that Ms. Nigrelli
27 would like to start working. The Collective Bargaining Agreement does not give Ms. Nigrelli the right
28 to work in Pit 1 on Mondays and Tuesdays even though she has more seniority than the other cocktail

1 server. Ms. Nigrelli bid to work in Pit 3 on Mondays and Tuesdays, not Pit 1. The Collective
2 Bargaining Agreement also does not allow Local 226 to insist that Monte Carlo management open Pit 3
3 at 5 p.m. instead of Pit 1. The "management's rights" provision of the Collective Bargaining
4 Agreement, Section 23.01, reserves to management important aspects of running its business, including
5 specifically the right to determine "schedules of operations".

6 9. I have not spoken with Samson Edea or Leo Batres about Ms. Nigrelli or her grievance.
7 At the time that I advised Esther Dyer about Ms. Nigrelli's grievance, I did not know that Mr. Edea and
8 Mr. Batres had spoken with Ms. Nigrelli about a video of Ms. Nigrelli's husband, or that Ms. Nigrelli's
9 husband patronized Station Casinos. I learned about that only after this lawsuit was filed.

10 I declare under the penalty of perjury of the laws of the United States and the State of Nevada
11 that this declaration is true and correct. This declaration was signed by me on this 23 day of May
12 2016 at San Francisco, California.

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15 Richard G. McCracken
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CERTIFICATE OF SERVICE

I am employed in the city and county of San Francisco, State of California. I am over the age of eighteen years and not a party to the within action; my business address is: DAVIS, COWELL & BOWE, LLP, 595 Market Street, Suite 800, San Francisco, California 94105.

On this 10th day of June, 2016, I caused to be served a true and correct copy of the above and foregoing:

• **AFFIDAVIT OF RICHARD G. McCRACKEN IN SUPPORT OF LOCAL 226'S MOTION FOR SUMMARY JUDGMENT**

via ECF filing, properly addressed to the following:

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*Attorneys for Defendants Victoria Partners
d/b/a MGM Resort and Casino*

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Executed on this 10th day of June, 2016 at San Francisco, California.

/s/ Lesley E. Phillips
Lesley E. Phillips

CERTIFICATE OF SERVICE

AFFIDAVIT OF RICHARD G. McCRACKEN IN SUPPORT OF
LOCAL 226's MOTION FOR SUMMARY JUDGMENT

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